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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION TWO

PAUL G. ROBINSON et al.,
Plaintiffs and Appellants,

v.

CRAIG GREENWOOD et al.,
Defendants and Appellants.

A123112, A124359

(Contra Costa County
Super. Ct. No. C06 00459)

I. INTRODUCTION

In 2002, Paul Robinson bought a six-unit rental property from Craig Greenwood. Subsequently, several tenants filed a complaint against Robinson and Dianne Evans, the property manager (and also apparently Robinson's domestic partner), based on the poor condition of the units. Robinson and Evans (Robinsons) then brought a cross-complaint for fraud against Greenwood and for fraud and professional negligence against real estate agent Kevin Nord, who was acting as a dual agent, and the real estate brokerage.¹ The trial court granted summary judgment in favor of these cross-defendants. In case No. A123112, Robinsons appeal from the final judgment entered after that ruling. In case No. A124359, consolidated with case No. A123112 by order of this court, Greenwood appeals from the trial court's denial of his motion for attorney fees. Because triable

¹ Robinsons named a number of other cross-defendants in their action, including the City of Pittsburg and its building inspector, K.C. Kampton. The City and Kampton filed a separate summary judgment motion, which was granted by the trial court. Robinsons filed a separate appeal in that case which was designated case No. A123508. At Robinsons' request, that appeal was dismissed on July 22, 2009.

issues of disputed fact exist as to whether Robinsons were fraudulently induced to purchase the building, we reverse the grant of summary judgment. This, in turn, moots the appeal from the order denying attorney fees.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Case No. A123112

In the late 1990's, defendant Craig Greenwood (Greenwood) purchased a six-unit apartment building located at 1062 Beacon Street in Pittsburg (the Property). In early 2002, K.C. Kampton (Kampton), an official with the City of Pittsburg's (City) building department, inspected the Property and advised Greenwood that he needed to correct a number of code violations at the Property. Sometime thereafter, Greenwood decided to sell the Property.

In March 2002, Greenwood contacted defendant Kevin Nord (Nord) to discuss selling the Property. Nord was a real estate agent with defendant Sec Pac, Inc., dba Security Pacific Real Estate Brokerage (Security Pacific) in Walnut Creek. Defendant Michael Clancy is the registered officer for Security Pacific. (Nord, Security Pacific and Clancy, collectively, are referred to as the Security Pacific Parties.) Greenwood provided Nord with the City's inspection report setting forth the necessary repairs. Initially, Greenwood and Nord discussed selling the Property "as is" with a list price of \$375,000. That idea, however, proved unworkable due to the repairs required by the City. Greenwood decided to make the repairs and list the Property for \$425,000.

In mid-May 2002, Robinsons met with Nord and expressed interest in purchasing an investment property. One of the property profiles Nord showed Robinsons was for the Property. Nord arranged a viewing and Robinsons submitted an offer to purchase the Property for \$425,000. Greenwood countered with some non-monetary conditions and on May 20, 2002, Robinsons accepted the counter-offer.

Robinsons thought a property inspection would be a good precaution. On May 24, 2002, Alex Contreras (Contreras) of Hi-Tech Inspections (Hi-Tech) inspected the Property. Both Robinson and Evans attended the inspection. Contreras told them that the building was old and had a lot of deferred maintenance. Hi-Tech prepared a 38-page

report (the Hi-Tech report) that identified numerous problems with the Property, including mold, water damage, and structural deficiencies. The Hi-Tech report concluded with a summary of findings that included 45 items identified by the inspector as “reportable conditions” that “may be a threat to health and safety, or because [sic], if not attended to now . . . could become much more significant very quickly, or . . . could affect the habitability of the [Property].”

At the request of Robinsons, Nord drafted an addendum to the contract providing: “Buyer does hereby remove document and inspection as a contingency if the following items are agreed to by seller Seller agrees to furnish buyer with release/letter from city of pittsburg [sic] for completion of specified/said repairs regarding city action.” The parties executed this addendum on June 12, 2002.

On or about July 27, 2002, Robinsons went to the Property and discovered that the City had “red-tagged” two of the units by posting notices that stated: “Dangerous Building – Do Not Occupy.” Robinsons sent a letter by fax and email to Nord stating that they went out to the Property “only to find that there are still serious issues, even more serious than before. We were told that all the units were rented and my understanding was [Greenwood] had almost finished with the city and was ready to proceed with lender inspection and appraisals. I do not think we want the lending institution to send out an appraiser or inspector at this time. Below are the issues that we could see from the outside of the building. [¶] Two of the units (numbers 4 and 5) have been labeled by the city of Pittsburg ‘DANGEROUS BUILDING, DO NOT OCCUPY it is a misdemeanor to occupy this building . . . ,’ and was dated 06/28/2002 However, unit 5 is occupied illegally and unit 4 is presently vacant. [¶] The sump pump in the basement still backs up, leaving standing water. This is an item listed on the city’s inspection report and, as of today, shows no sign of correction. . . . [¶] The electrical for all of the units is not complete. The panel for unit 2 has been re-labeled for unit 4, and still does not have a meter installed. . . . [¶] What is [Greenwood] telling you about these issues? Do you have more information?”

Nord immediately contacted Greenwood, who assured Nord that he would continue to work with the City to have all of the violations cleared and with his contractors to ensure that all repair items specified by the City were addressed as quickly as possible so that the sale could proceed. Nord contacted Robinsons and assured them that all required work would be done.

On September 6, 2002, via an addendum to the contract, Evans was removed as a buyer, leaving Robinson as the sole purchaser of the Property.²

On September 19, 2002, the City issued a Certificate of Occupancy which certified that “at the time of issuance this structure was in compliance with the various ordinances of the City regulating building construction or use.” Kampton, the City building department official, testified that the Certificate of Occupancy cleared all violations issued by the City regarding the Property. Robinsons understood the document to confirm that Greenwood had done everything necessary to bring the Property into compliance with the City’s requirements and that all violations had been cleared. Escrow closed on October 21, 2002.

In March 2006, several tenants filed a lawsuit against Robinson as the owner of the Property and Evans as the property manager. The tenants’ complaint alleged a number of habitability defects in the premises including mold and mildew, cockroach and rodent infestation, leaky plumbing, gas leaks, cracked windows, dangerous electrical wiring, and vagrant and drug activity.

On August 29, 2006, Robinsons filed their cross-complaint against, inter alia, Greenwood and the Security Pacific Parties. On October 11, 2007, they filed their third

² In their motion for summary judgment, cross-defendants expressed confusion as to why Evans was still a cross-complainant despite having no property interest in the subject Property. In their respective briefs on appeal, both Greenwood and the Security Pacific Parties contend that, although Evans is listed as an appellant, she has no standing in this appeal to pursue claims based on alleged defects at the Property because she was not a buyer of the Property and there is no evidence that she has any legal or equitable interest therein. We will direct the trial court to address the issue of Evans’ status on remand.

amended cross complaint (3ACC), the operative pleading upon which summary judgment was granted. As against Greenwood and the Security Pacific Parties, Robinsons alleged causes of action for fraudulent concealment (first cause of action), intentional misrepresentation (second), negligent misrepresentation (third), and equitable and comparative indemnity (eighth). Robinsons also alleged against the Security Pacific Parties causes of action for breach of fiduciary duty (fourth cause of action) and professional negligence (fifth cause of action).

In March 2008, Greenwood and the Security Pacific Parties moved for summary judgment.³ The motion was based in part on the contentions that Robinsons were aware of the relevant conditions at the Property prior to close of escrow.

The trial court found that the moving parties negated the element of justifiable reliance in the first and second causes of action for fraud and deceit. Concluding that the other causes of action were dependent upon the fraud and deceit claims, the trial court granted summary judgment.

An amended judgment was filed on October 9, 2008, and served on October 10. Robinsons' notice of appeal from the amended judgment was timely filed on October 27.

On July 7, 2009, the California Association of Realtors (CAR) filed an application for leave to file an amicus curiae brief in support of the Security Pacific Parties, which this Court granted without opposition. On September 17, 2009, Robinsons filed a brief in response to the amicus brief.

B. Case No. A124359

Following the trial court's grant of summary judgment, Greenwood filed a motion for attorney fees and costs. Robinsons filed opposition to the fees request but did not oppose costs. The trial court held a hearing on January 9, 2009, after having issued its

³ In the trial court proceedings, Greenwood and the Security Pacific Parties were jointly represented by the same counsel, Gerald Beaudoin, until Beaudoin withdrew from representing the Security Pacific Parties while the summary judgment motion was pending. Greenwood and the Security Pacific Parties are separately represented on appeal.

tentative ruling denying fees the previous day. After hearing the argument of the parties, the trial court adopted the tentative ruling as its final ruling. The court's order awarding costs as requested and denying attorney fees was filed on January 30, 2009. The notice of appeal was timely filed on February 18, 2009. The appeal was designated by this court as case No. A124359 and was consolidated, per Greenwood's motion, with case No. A123112.

III. DISCUSSION

A. Summary Judgment; Case No. A123112

1. Standard of Review

We review the trial court's grant of summary judgment de novo to determine whether any triable issues of fact exist with regard to any cause of action. (*Hamburg v. Wal-Mart Stores, Inc.* (2004) 116 Cal.App.4th 497, 502 (*Hamburg*).) The appellate court reviews only those facts that were before the trial court, and will disregard any new factual allegations. (*DiCola v. White Bros. Performance Products* (2008) 158 Cal.App.4th 666, 676.) The court strictly construes the moving party's evidence and liberally construes the evidence in opposition, including resolving all doubts as to whether there is a triable issue of material fact in favor of the party opposing summary judgment. (*Saelzler v. Advanced Group 400* (2001) 25 Cal.4th 763, 768; *Weiner v. Southcoast Childcare Ctrs., Inc.* (2004) 32 Cal.4th 1138, 1142.) In conducting this review, the court applies the same three-step analysis required of the trial court: (1) identify the issues as framed by the pleadings; (2) determine whether the moving party has established facts which negate the opponent's claim and justify a judgment in the movant's favor; and (3) when the moving papers prima facie justify a judgment, determine whether the opposition demonstrates the existence of a triable, material factual issue. (*Hamburg, supra*, 116 Cal.App.4th at pp. 502-503.)

2. The Issues Framed by the Pleadings

Robinsons' first cause of action for fraudulent concealment is based on allegations that respondents "knew or should have known of the existence of conditions rendering the Property uninhabitable, in need of major reconstruction or demolition, including but

not limited to extensive dry rot, water damage and other deterioration of structural elements of the building;” that respondents had a duty to disclose to appellants the existence of these conditions and other latent defects of which they had or should have had knowledge; and that Robinsons suffered damages as a result of respondents’ failure to disclose.

The elements of a cause of action for fraudulent concealment are: “(1) the defendant must have concealed or suppressed a material fact, (2) the defendant must have been under a duty to disclose the fact to the plaintiff, (3) the defendant must have intentionally concealed or suppressed the fact with the intent to defraud the plaintiff, (4) the plaintiff must have been unaware of the fact and would not have acted as he did if he had known of the concealed or suppressed fact, and (5) as a result of the concealment or suppression of the fact, the plaintiff must have sustained damage. [Citation.]”

(Marketing West, Inc. v. Sanyo Fisher (USA) Corp. (1992) 6 Cal.App.4th 603, 612-613.)

Robinsons’ cause of action for intentional misrepresentation alleges that respondents represented that “the Property was in habitable condition and free from major structural defects that would require extensive reconstruction or demolition;” that respondents knew these representations were false and knew that Robinsons would rely on these representations in deciding to purchase the Property; Robinsons justifiably relied on the misrepresentations and would not have purchased the Property if they had known the representations were false; as a result, Robinsons suffered damages. The elements of intentional misrepresentation are: (1) an assertion by the defendant of a material fact; (2) the representation is false; (3) the defendant knew the representation was false; (4) the defendant intended the plaintiff to rely on the representation; (5) the plaintiff reasonably relied on the representation; (6) the plaintiff was damaged; and (7) the plaintiff’s reliance was a substantial factor in causing the damage. *(Manderville v. PCG & S Group, Inc. (2007) 146 Cal.App.4th 1486, 1498 & fn. 4, citing CACI No. 1900.)*

Robinsons’ cause of action for negligent misrepresentation is based on the same allegations, with the exception of the element of knowledge. Rather than alleging that respondents knew the representations were false, Robinsons allege that respondents

“should have known that the representations were false and acted in reckless and negligent disregard of their truth or falsity, knowing that [Robinsons] would rely on them in deciding to purchase the Property.” A cause of action for negligent misrepresentation requires proof of (1) the defendant’s representation of a material fact; (2) the representation was false; (3) the defendant made the representation without reasonable grounds for believing it to be true; (4) the defendant made the representation with the intent to induce the plaintiff to rely on it; (5) the plaintiff was unaware that the representation was false but acted in justifiable reliance on its truth; and (6) the plaintiff suffered damage as a result. (See *Bynum v. Brand* (1990) 219 Cal.App.3d 926, 940.)

Robinsons’ fourth and fifth causes of action are alleged only against the Security Pacific Parties. The fourth cause of action alleges that, in making the representations and failures to disclose previously alleged, the Security Pacific Parties “committed fraud and dishonest dealing and breached their fiduciary duties in violation of their professional obligations” “To establish a cause of action for breach of fiduciary duty, a plaintiff must demonstrate the existence of a fiduciary relationship, breach of that duty and damages.” (*Charnay v. Cobert* (2006) 145 Cal.App.4th 170, 182.)

In the fifth cause of action, for professional negligence, Robinsons allege that in making the same “alleged representations and failures to disclose,” the Security Pacific Parties “breached the professional standard of care for licensed real estate salespersons and brokers.” The elements of a cause of action for professional negligence are “ ‘(1) the duty of the professional to use such skill, prudence and diligence as other members of the profession commonly possess and exercise; (2) breach of that duty; (3) a causal connection between the negligent conduct and the resulting injury; and (4) actual loss or damage resulting from the professional negligence.’ [Citation.]”⁴ (*Loube v. Loube* (1998) 64 Cal.App.4th 421, 429.)

⁴ As Robinsons point out, a cause of action for professional negligence does not include the element of reliance. It thus appears that the trial court misstated the law when it concluded in its Final Decision that Robinsons’ “fifth . . . cause[] of action [is] dependent upon the fraud or deceit causes of action. As a required element of those

Finally, the eighth cause of action for equitable and comparative indemnity against Greenwood and the Security Pacific Parties, by which Robinsons sought indemnity if they were found liable to the tenants, also incorporated all the preceding allegations and was based on the same previously-alleged wrongful conduct.

Robinsons' theory of liability was that, by concealing and/or misrepresenting the true condition of the Property, respondents induced Robinsons to purchase the Property; Robinsons reasonably relied on respondents' representations and/or failures to disclose and were damaged as a result.

3. The Moving Parties' Showing Does Not Negate the Element of Reliance

a. Respondents' Motion

Respondents' summary judgment motion attacked Robinsons' causes of action on a number of grounds, including that Robinsons had no evidence that respondents had knowledge of conditions at the Property that they were concealing and no evidence that Nord or Greenwood made representations which proved to be untrue; that the purchase agreement contractually limited the Security Pacific Parties' obligations; and that Robinsons could not establish any damages.

In addition, respondents argued that, prior to close of escrow, Robinsons knew or were on notice of every condition of the Property referenced in their complaint and thus, Robinsons could not establish that they reasonably or justifiably relied on a false view of the condition of the Property. The trial court found this argument persuasive and based its order granting summary judgment on its finding that Robinsons could not establish the element of reliance.

In support of their motion, respondents submitted documentary evidence, including Hi-Tech's property inspection report dated May 24, 2002. The report detailed the conditions discovered during the inspection throughout the premises and recommended corrective actions.

causes of action cannot be established, they cannot form the basis for a professional negligence . . . claim." On this basis alone, the summary judgment motion should have been denied.

Respondents also submitted the letter from Robinsons to Nord following Robinsons' visit to the Property in July 2002 when they observed that the City had "red-tagged" two of the units, declaring them too dangerous to occupy.

Respondents also submitted deposition testimony. Robinson testified at his deposition that he became aware of problems with the City in approximately July 2002; and that, before closing escrow, he wanted the heating, hot water, and sump pump issues resolved. At her deposition, Evans acknowledged that Contreras told her and Robinson that the Property had "a lot of deferred maintenance," and that she saw the City's condemnation notices on two of the units. She stated that she reviewed the inspection report, but did not remember if she went through it "page by page." However, she was "sure" that, prior to the close of escrow, she reviewed the Summary of Findings section that listed 45 separate problems existing at the Property. Evans also testified that she and Robinson requested documentation from the City indicating that the problems with the Property had been resolved and that the building was safe and habitable.

Respondents also submitted declarations of K.C. Kampton, the City's building inspector and chief code enforcement officer, Craig Greenwood, and Kevin Nord. Kampton declared that all the work required by the City to clear the code violations had been completed when the Certificate of Occupancy was issued. Greenwood averred that he gave Robinson full access to the Property and that Robinson could have terminated the purchase agreement at any time before close of escrow. Greenwood understood the City's Certificate of Occupancy to be the City's acknowledgement that all repairs had been completed and that all violations against the Property had been cleared. In Nord's declaration, he stated that Robinsons requested the addition of Addendum No. 2 to the purchase agreement because they were aware of the City's action against the Property.

Respondents also relied on several documents that were part of the purchase contract. Addendum No. 2 to the purchase contract states that Robinsons would remove the inspection contingency upon receipt of documentation from the City that all work at the Property had been completed and the building had been brought into compliance with the City's code requirements. The "As Is" Provision, an addendum to the purchase

agreement, provided in pertinent part: “Seller makes no representations or warranties expressed or implied with respect to the physical condition or any other aspect of the property [¶] Purchaser hereby represents, covenants and warrants for the benefit of Seller that Purchaser has conducted all necessary studies, investigations, inspections, and obtained other information as Purchaser deems necessary or advisable to determine the efficacy of the premises for the intended purposes of Purchaser prior to executing this Agreement, and Purchaser is relying solely upon his, her or its own investigations and inspections of the property in entering into this Agreement. . . . [¶] Purchaser . . . expressly acknowledges that this property is being sold ‘as is’ . . . and that Purchaser is completely at risk vis a vis Seller or any agent or employee of Seller with respect to all attributes and conditions of the property, including the land, and any buildings or improvements thereon” Finally, the Statement of Condition provided, in part: “Buyer has been given full and complete opportunity to make a physical inspection of the subject property. Buyer’s decision to accept the condition of the property is based solely on Buyer’s own investigations, or the investigation of skilled and competent contractors paid for and appointed by Buyer. Buyer has not relied upon any representations or warranties implied or expressed by Broker or Seller concerning the physical condition of the property.” Robinson and Evans signed these latter two documents on May 22, 2002.

b. Robinsons’ Opposition

Robinsons opposed the summary judgment motion, arguing (1) that there were material facts that Greenwood and Nord did not disclose, precluding summary adjudication of the fraudulent concealment cause of action, that Greenwood and Nord made false statements, precluding summary adjudication of the misrepresentation causes of action, and that there were disputed material facts regarding Nord’s failures to disclose, misrepresentations, and breaches of professional duty, precluding summary adjudication of the causes of action for breach of fiduciary duty and professional negligence causes of action.

In opposing respondents’ contention that Robinsons had knowledge of the condition of the Property, Robinsons argued that respondents failed to disclose material

facts about the City's 2002 enforcement action and both concealed information and made false representations regarding the condition of the Property. In support of these contentions, Robinsons cited to their expert's opinion that Greenwood did not repair all of the violations noted in the City's enforcement action and concealed this fact. Robinsons also asserted that Nord misrepresented the nature of the City's enforcement action and did not disclose the City's violation notices related to the Property that it issued in January and February 2002, and did not disclose the changes to the asking price for the property (initially \$299,000, then \$375,000, then \$425,000).

In her declaration, Evans stated that certain documents were produced during the litigation, "showing that Greenwood faxed these documents to Mr. Nord on June 10, 2002. We were never told about these documents, nor given copies of them. The contents of these documents were never disclosed to us. If we had known that less than three months before we signed the purchase contract the City had determined that the building was structurally unsafe and dangerous we would not have proceeded with the purchase."

c. The Trial Court's Ruling

The trial court granted respondents' motion on the basis that the moving parties had "negated the element of reliance" in Robinsons' causes of action for fraud and deceit. The court found dispositive the facts that Robinsons conducted their own inspection of the Property, "which revealed extensive defects, code violations, and habitability problems," and that they "personally observed City notices at the property, notifying building occupants that the building was too dangerous to occupy." The court relied on *Carpenter v. Hamilton* (1936) 18 Cal.App.2d 69, 71-76 (*Carpenter*), for the proposition that reliance can be negated by a party's own independent investigation. The court held that Robinsons were not hindered in making their investigation, and thus were presumed to have acquired not only the knowledge of defects contained in the inspection report, but also any knowledge that would come from the further investigation of an ordinarily diligent buyer. (*Carroll v. Dungey* (1963) 223 Cal.App.2d 247, 255-256; *Gifford v.*

Roberts (1947) 81 Cal.App.2d 712, 718.)⁵ Under the circumstances, according to the trial court, Robinsons could not claim to have relied on any misrepresentations by respondents.

d. *Analysis*

“ ‘The necessary elements of fraud are: (1) misrepresentation (false representation, concealment, or nondisclosure); (2) knowledge of falsity (scienter); (3) intent to defraud (i.e., to induce reliance); (4) justifiable reliance; and (5) resulting damage.’ [Citations.]” (*Alliance Mortgage Co. v. Rothwell* (1995) 10 Cal.4th 1226, 1239 (*Rothwell*).)

“Reliance exists when the misrepresentation or nondisclosure was an immediate cause of the plaintiff’s conduct which altered his or her legal relations, and when without such misrepresentation or nondisclosure he or she would not, in all reasonable probability, have entered into the contract or other transaction. [Citations.] ‘Except in the rare case where the undisputed facts leave no room for a reasonable difference of opinion, the question of whether a plaintiff’s reliance is reasonable is a question of fact.’ (*Blankenheim v. E. F. Hutton & Co.* (1990) 217 Cal.App.3d 1463, 1475; *Gray v. Don Miller & Associates, Inc.* (1984) 35 Cal.3d 498, 503 [‘[w]hether reliance is justified is a question of fact for the determination of the trial court’]; *Guido v. Koopman* (1991) 1 Cal.App.4th 837, 843 [‘the reasonableness of the reliance is ordinarily a question of fact’].) ‘However, whether a party’s reliance was justified may be decided as a matter of law if reasonable minds can come to only one conclusion based on the facts.’ (*Guido v. Koopman, supra*, 1 Cal.App.4th at p. 843.)” (*Rothwell, supra*, 10 Cal.4th at p. 1239.)

“ ‘Negligence on the part of the plaintiff in failing to discover the falsity of a statement is no defense when the misrepresentation was intentional rather than negligent.’

⁵ We pause to note that none of the cases cited by the trial court involved a motion for summary judgment. *Carpenter, supra*, 18 Cal.App.2d 69 was an appeal from an order denying a motion for judgment notwithstanding the verdict; *Gifford v. Roberts, supra*, 81 Cal.App.2d 712, was an appeal from a judgment quieting title to land; and *Carroll v. Dungey, supra*, 223 Cal.App.2d 247 was an appeal from a judgment after trial.

(*Seeger v. Odell* [(1941)] 18 Cal.2d [409,] 414.) ‘Nor is a plaintiff held to the standard of precaution or of minimum knowledge of a hypothetical, reasonable man.’ (*Id.* at p. 415.) ‘If the conduct of the plaintiff in the light of his own intelligence and information was manifestly unreasonable, however, he will be denied a recovery.’ (*Ibid.*; *Gray v. Don Miller & Associates, Inc.*, *supra*, 35 Cal.3d at p. 503 [‘the issue is whether the person who claims reliance was justified in believing the representation in the light of his own knowledge and experience’].)” (*Rothwell*, *supra*, 10 Cal.4th at pp. 1239-1240.)

The issue in this appeal is whether Robinsons’ purported reliance on misrepresentations and failures to disclose by Greenwood and Nord, the agent for both Robinsons and Greenwood, was unreasonable as a matter of law. In light of all the circumstances and the evidence, summary judgment was improperly granted, as we shall explain.

First, according to Evans’ declaration, Robinsons were buying their first investment property and had no previous training or experience in commercial real estate. Nord held himself out as a specialist in investing in apartment buildings and told Robinsons he would guide them through the process and make sure that the purchase made sense for them, including helping them to understand what they were buying and what would be required in order to make it a profitable investment. Robinsons were inexperienced investors and made clear to Nord that they looked to him for guidance. (See *Gray v. Don Miller & Associates, Inc.*, *supra*, 35 Cal.3d at p. 503 [“the issue is whether the person who claims reliance was justified in believing the representation in the light of his own knowledge and experience”].) It was in this context that Nord (again, a “dual agent”) directed Robinsons’ attention to the Property and recommended it as the most suitable property for them to purchase.

The reasonableness of Robinsons’ reliance on Nord’s repeated assurances after the May 2002 inspection that all but the cosmetic repairs would be made, and were made, presents a triable issue of material fact. Nord, in his capacity as dual agent, discussed the inspection report with Robinsons and told them there was nothing to worry about. Nord told them that he was working with Greenwood and the City “to make sure that the

building was in compliance with all local code requirements before close of escrow and that all issues with the City had been resolved.” In July 2002, Robinsons observed notices that read “Dangerous Building—Do Not Occupy” posted on two units. Robinsons contacted Nord who again told them not to worry. “He said that Greenwood was not completing the work as quickly as the City wanted him to and the notices were just pressure tactics by the City to get Greenwood to finish up. He told us that the work had mostly been done but that the paperwork had not caught up with it.”

Nord, who, again, represented both Robinsons and Greenwood, repeatedly told Robinsons not to contact the City because, in view of the personality conflicts between Greenwood and City officials, this might further delay things. On September 18, 2002, Nord, as “Agent for Craig Greenwood,” wrote to the City and requested a letter releasing all prior infractions. Nord obtained a Certificate of Occupancy which he provided to Robinsons. He affirmatively represented that the Certificate met the release provision of the addendum to the contract, that Greenwood had made all the repairs required to bring the Property into code compliance, and that the only repairs Greenwood had not made were cosmetic. In her declaration, Evans stated: “We understood that there was deferred maintenance and that we were taking on a building that would need a lot of cosmetic repairs. . . . However, we were absolutely assured that there were no problems with the basic structure and systems as Greenwood had made all necessary repairs to bring the building into compliance with applicable codes and the City had given its blessing.”

Similarly, there is a triable issue of fact as to whether the repairs to the Property promised by Nord were actually made, as claimed by Greenwood. Robinsons submitted the declaration of David J. Fogleman,⁶ a licensed contractor whose business primarily focused on new residential construction and repairs of both residential and commercial structures. Fogleman reviewed documents and deposition testimony and inspected the

⁶ Respondents filed objections to this declaration and the trial court sustained a number of them. Robinsons do not contest these evidentiary rulings on appeal. Accordingly, we will disregard all statements in this declaration as to which objections were sustained. Our discussion refers only to the surviving content.

Property on at least three different occasions. According to Fogleman, dry rot and mold is present throughout the Property. He opined that, “based on the amount of dry rot and mold that currently exists in the Subject Property, Mr. Greenwood could not have repaired these conditions as he claims.” Fogleman observed that the building contained the original redwood lumber almost exclusively, and noted that redwood lumber could not have been obtained for repairs in 2002. Based on these facts, he opined that Greenwood made no repairs to water-damaged wood in the building. In response to Greenwood’s testimony during his deposition that he never had problems with windows leaking and that he had repaired all dry rot conditions, Fogleman indicated that there was water damage under almost all of the windows and dry rot, as stated above. Fogleman opined that all the violations identified by the City could not have been cleared for the \$50,000 Greenwood claimed to have spent. Rather, it would have cost hundreds of thousands of dollars. Various conditions that were cited in violation documents from 2002 still existed on the Property. Fogleman opined that the violations identified in documents from 2005 and later were the same violations noted in the 2002 documents.

In light of this evidence, it is apparent that there are triable issues of fact with respect to Robinsons’ reliance. A reasonable trier of fact *could* find that Robinsons relied on representations and assurances that all required repairs had been made, and that such reliance was reasonable.

In granting summary judgment on the basis that Robinsons' reliance was manifestly unreasonable, the trial court's reliance on *Carpenter, supra*, 18 Cal.App.2d 69 was misplaced. The court in *Carpenter* reversed a judgment for the plaintiffs on their claim that they were fraudulently induced to buy a residence represented to be in good condition. The buyers inspected the property several times but claimed not to notice obvious conditions such as old and patched roofs, floors that were not level and the foundation that had sunk on three sides of the building, which caused the floors to sink and plaster walls to crack. (*Id.* at p. 70.) The court found that reliance was negated as a matter of law: “[T]he right to rely upon the representations, of course, does not exist where a purchaser chooses to inspect the property before purchase, and, in making such

inspection, learns the true facts, for the obvious reason that he has not been defrauded unless he has been misled, and he has not been misled where he has acted with actual or imputed knowledge of the true facts. [Citations.]” (*Id.* at p. 71.)

The matter before us is demonstrably different. The conditions and misrepresentations in *Carpenter* involved “common physical conditions” which “anyone was competent to see and understand.” (*Carpenter, supra*, 18 Cal.App.2d at p. 73.) “The true condition of the buildings was before them. If they neglected to discover what was in plain sight the law will nevertheless charge them with knowledge of what they should have discovered.” (*Id.* at p. 75.) By contrast, the defects in the Property here were technical and complex issues beyond the knowledge of the ordinary layperson. Robinsons were in no position to evaluate technical building code violations or structural deficiencies. Moreover, the rule announced in *Carpenter* applies to matters that were evident and should have been discovered *at the time of the inspection*. It does not apply here because the misrepresentations at issue pertained to repairs allegedly made over a period of several months *after* the inspection and before the close of escrow.

In their briefs to us and at oral argument, counsel for the Security Pacific Parties cited *Padgett v. Phariss* (1997) 54 Cal.App.4th 1270 (*Padgett*) and *Pagano v. Krohn* (1997) 60 Cal.App.4th 1 (*Pagano*), both nondisclosure cases in which summary judgment for defendant agents and brokers was affirmed on appeal. Neither case compels a similar result here, however. In *Padgett*, the agents did not know and therefore did not disclose to the buyers that there was a soil subsidence problem in common areas of the development and that the homeowners’ association had filed a lawsuit against the developer. The buyer discovered the litigation after escrow closed and sued for breach of fiduciary duty, among other claims. (*Padgett, supra*, 54 Cal.Ap.4th at pp. 1276-1277.) The trial court granted summary judgment and the appellate court affirmed, finding that the buyer’s agent had no actual or imputed knowledge of any defects in the property and thus no duty to inquire further. (*Id.* at pp. 1278, 1286.) In *Pagano*, the agents disclosed a water intrusion problem in some units of the complex and resulting litigation, but there was no sign of water damage in the seller’s unit. (*Pagano, supra*, 60 Cal.App.4th at pp.

5-6.) After the close of escrow, the buyers discovered water intrusion in their unit and brought suit. (*Id.* at p. 6.) The trial court granted summary judgment and the appellate court affirmed, holding that the disclosures were sufficient where there was no evidence that the defendants knew of any water intrusion problem in the seller's unit. (*Id.* at pp. 7-12.) Unlike the agents in *Padgett* and *Pagano*, Nord knew about the City's action against the Property, knew there were major structural problems with the building, knew that Greenwood was handling the repairs himself, advised Robinsons to purchase the Property and not to contact the City, and assured Robinsons that all necessary repairs had been made. Finally, in neither case was there, as there was here with Nord, a "dual agency" situation.

In light of our conclusion that there exist triable issues of fact with respect to the issue of reliance, the order granting summary judgment must be reversed and we need not consider the other contentions raised by the parties in case No. A123112.

B. Motion for Attorney Fees; Case No. A124359

In his appeal from the trial court's denial of his motion for attorney fees, Greenwood argues that the trial court misinterpreted certain provisions of the purchase agreement and that, as the prevailing party below, he is entitled to those fees. Our reversal of summary judgment moots this claim.

IV. DISPOSITION

The summary judgment in case No. A123112 is reversed and the matter is remanded to the trial court for further proceedings consistent with this opinion. On remand, the trial court is directed to determine the status of Dianne Evans in this matter. Greenwood's appeal in case No. A124359 is dismissed as moot. Costs on appeal are awarded to Robinsons.

Haerle, Acting P.J.

We concur:

Lambden, J.

Richman, J.